

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 92-21

In the Matter of

Amendment of Section 73.202(b), RM-7796  
Table of Allotments,  
FM Broadcast Stations.  
(Cave City and Radcliff, Kentucky,  
and Santa Claus, Indiana)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 4, 1992; Released: February 12, 1992

Comment Date: April 6, 1992

Reply Comment Date: April 21, 1992

By the Assistant Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by W & B Broadcasting, Inc. ("petitioner"), requesting the substitution of Channel 278C3 for Channel 278A at Radcliff, Kentucky, and the modification of its construction permit (BPH-871110MU) to specify operation on the higher powered channel. Petitioner states that it will apply for the channel, if allotted. In order to accomplish the upgrade at Radcliff, petitioner also requests changes in the reference coordinates for vacant but applied for Channel 279C3 at Cave City, Kentucky,<sup>1</sup> and for vacant but applied for Channel 277A at Santa Claus, Indiana.<sup>2</sup>

2. We believe the public interest could be served by proposing the substitution of Channel 278C3 for Channel 278A at Radcliff, Kentucky, since it could provide a wide coverage area FM service to Radcliff. An engineering analysis has determined that Channel 278C3 can be allotted to Radcliff in compliance with the Commission's minimum distance separation requirements with a site restriction 15.0 kilometers (9.3 miles) west of the community.<sup>3</sup>

3. We seek comment as to whether we should impose the requested site restrictions on the Cave City and Santa Claus channels. Specifically, petitioner proposes a new site restriction for Channel 277A at Santa Claus of 13.6 kilometers (8.5 miles) northwest of the community. The channel was allotted with a site restriction of 7.4 kilometers (4.6 miles) north.<sup>4</sup> We question whether this additional site restriction may render the Santa Claus allotment unusable. As the Commission has stated:

The underlying requirement for an allotment is the reasonable expectation that a usable site is available which complies with the minimum spacing requirements. We will not allot a channel where a properly spaced site is technically infeasible. Although the Commission generally presumes in rule making proceedings that a technically feasible site is available, that presumption is rebuttable.

*Memorandum Opinion and Order (San Clemente, CA)*, 3 FCC Rcd 6728 (1988). Therefore, we request petitioner to provide reasonable assurance that transmitter sites conforming to the site restriction are available. If petitioner is not able to provide such assurances, we may not grant its proposal. Furthermore, we note that the allotment of Channel 278C3 at Radcliff would be short-spaced to the coordinates specified in the application for Channel 277A at Santa Claus. Therefore, in the event that petitioner's proposal is granted, we will afford the Santa Claus applicant with the opportunity to amend its application accordingly without loss of cut-off protection. We will serve the applicant for Channel 277A at Santa Claus with a copy of this Notice.<sup>5</sup>

4. As requested, we also propose to modify the construction permit for Channel 278A at Radcliff, Kentucky, to specify operation on Channel 278C3. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 278C3 at Radcliff or require petitioner to demonstrate the availability of an additional equivalent class channel.

5. Accordingly, we seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.
City	Present Proposed
Radcliff, Kentucky	278A 278C3

<sup>1</sup> Channel 279C3 is reserved for Station WHHT(FM), Cave City. A Report and Order in MM Docket No. 90-439, 6 FCC Rcd 387 (1991), modified the license for Station WHHT(FM) to operate on Channel 279C3 in lieu of Channel 279A.

<sup>2</sup> Channel 277A was allotted to Santa Claus in a Report and Order in MM Docket No. 87-597, 4 FCC Rcd 776 (1989). T.C. Monte, Inc., is the sole applicant for Channel 277A at Santa Claus (BPH-900108NY).

<sup>3</sup> The coordinates for Channel 278C3 at Radcliff are North Latitude 37-50-34 and West Longitude 86-06-49.

<sup>4</sup> Petitioner proposes to change the reference coordinates for Channel 277A at Santa Claus from North Latitude 38-09-41 and West Longitude 86-58-47 to North Latitude 38-12-50 and West

Longitude 87-00-50.

<sup>5</sup> Petitioner also proposes a new site restriction for Channel 279C3 at Cave City of 20.4 kilometers (12.7 miles) southeast of the community, at North Latitude 36-57-34 and West Longitude 86-00-08. The channel was originally allotted to the community with a site restriction of 17.2 kilometers (10.2 miles) south, at North Latitude 36-59-39 and West Longitude 86-01-48. Because the proposed restriction specifies the same site contained in the application filed by Station WHHT(FM), Cave City, for the channel (BPH-9109201B), reasonable assurance is not necessary for the Cave City allotment. We will serve the licensee of Station WHHT(FM) with a copy of this Notice.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **April 6, 1992**, and reply comments on or before **April 21, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Jerrold Miller  
Miller & Fields, P.C.  
P.O. Box 33003  
Washington, D.C. 20033  
(Attorney for W & B Broadcasting, Inc.)

8. IT IS FURTHER ORDERED. That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making* to the licensee of Station WHHT(FM) and the applicant for Channel 277A at Santa Claus, Indiana:

Newberry  
Broadcasting, Inc  
P.O. Box 457  
Glasgow, Kentucky 42141  
(Licensee of  
Station WHHT(FM))

John F. Garziglia  
Pepper & Corazzini  
1776 K Street, N.W.  
Suite 200  
Washington, D.C. 20006  
(Attorney for Newberry  
Broadcasting, Inc.)

T. C. Monte, Inc.  
2500 Cincinnati Common  
Center  
Cincinnati, Ohio 45202  
(BPH-900108NY)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the

other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Assistant Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested

parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.